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6 Attorneys for Complainant

7
8 **BEFORE THE**
CALIFORNIA BOARD OF ACCOUNTANCY
9 **DEPARTMENT OF CONSUMER AFFAIRS**
STATE OF CALIFORNIA

10 In the Matter of the Accusation Against:

Case No. AC-2006-21

11 **JANELL MISSY LEE**
12 P.O. Box 4815
Oakland, California 94605

**STIPULATED SURRENDER OF
LICENSE AND ORDER**

13 Certified Public Accountant Certificate
14 No. CPA 62196

15 Respondent.

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17 IT IS HEREBY STIPULATED AND AGREED by and between the parties in this
18 proceeding that the following matters are true:
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20 **PARTIES**

21 1. Carol Sigmann (Complainant) is the Executive Officer of the California
22 Board of Accountancy. She brought this action solely in her official capacity and is represented
23 in this matter by Bill Lockyer, Attorney General of the State of California, by Shana A. Bagley,
24 Deputy Attorney General.

25 2. Janell Missy Lee (Respondent) is representing herself in this proceeding
26 and has chosen not to exercise her right to be represented by counsel.

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1 3. On or about July 31, 1992, the California Board of Accountancy issued
2 Certified Public Accountant Certificate No. CPA 62196 to Janell Missy Lee (Respondent). The
3 Certificate will expire on November 30, 2007, unless renewed.

4 **JURISDICTION**

5 4. Accusation No. AC-2006-21 was filed before the California Board of
6 Accountancy (Board), Department of Consumer Affairs, and is currently pending against
7 Respondent. The Accusation and all other statutorily required documents were properly served
8 on Respondent on May 15, 2006. Respondent timely filed her Notice of Defense contesting the
9 Accusation. A copy of Accusation No. AC-2006-21 is attached as Exhibit "A" and incorporated
10 herein by reference.

11 **ADVISEMENT AND WAIVERS**

12 5. Respondent has carefully read, and understands the charges and allegations
13 in Accusation No. AC-2006-21. Respondent also has carefully read, and understands the effects
14 of this Stipulated Surrender of License and Order.

15 6. Respondent is fully aware of her legal rights in this matter, including the
16 right to a hearing on the charges and allegations in the Accusation; the right to be represented by
17 counsel, at her own expense; the right to confront and cross-examine the witnesses against her;
18 the right to present evidence and to testify on her own behalf; the right to the issuance of
19 subpoenas to compel the attendance of witnesses and the production of documents; the right to
20 reconsideration and court review of an adverse decision; and all other rights accorded by the
21 California Administrative Procedure Act and other applicable laws.

22 7. Respondent voluntarily, knowingly, and intelligently waives and gives up
23 each and every right set forth above.

24 **CULPABILITY**

25 8. Respondent admits the truth of each and every charge and allegation in
26 Accusation No. AC-2006-21, agrees that cause exists for discipline and hereby surrenders her
27 Certified Public Accountant Certificate No. CPA 62196 for the Board's formal acceptance.

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1 9. Respondent understands that by signing this stipulation, she enables the
2 Board to issue an order accepting the surrender of her Certified Public Accountant Certificate
3 without further process.

4 **CIRCUMSTANCES IN MITIGATION**

5 10. Respondent has never been the subject of any disciplinary action. She is
6 admitting responsibility at an early stage in the proceedings and has been cooperative with the
7 Board in all stages of the proceedings.

8 **CONTINGENCY**

9 11. This stipulation shall be subject to approval by the California Board of
10 Accountancy. Respondent understands and agrees that counsel for Complainant and the staff of
11 the California Board of Accountancy may communicate directly with the Board regarding this
12 stipulation and surrender, without notice to or participation by Respondent. By signing the
13 stipulation, Respondent understands and agrees that she may not withdraw her agreement or seek
14 to rescind the stipulation prior to the time the Board considers and acts upon it. If the Board fails
15 to adopt this stipulation as its Decision and Order, the Stipulated Surrender and Disciplinary
16 Order shall be of no force or effect, except for this paragraph, it shall be inadmissible in any legal
17 action between the parties, and the Board shall not be disqualified from further action by having
18 considered this matter.

19 12. The parties understand and agree that facsimile copies of this Stipulated
20 Surrender of License and Order, including facsimile signatures thereto, shall have the same force
21 and effect as the originals.

22 13. In consideration of the foregoing admissions and stipulations, the parties
23 agree that the Board may, without further notice or formal proceeding, issue and enter the
24 following Order:

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1 **ORDER**

2 IT IS HEREBY ORDERED that that the surrender of Certified Public Accountant
3 Certificate No. CPA 62196, issued to Respondent Janell Missy Lee, is accepted by the California
4 Board of Accountancy.

5 1. The surrender of Respondent's Certified Public Accountant Certificate
6 and the acceptance of the surrendered license by the Board shall constitute the imposition of
7 discipline against Respondent. This stipulation constitutes a record of the discipline and shall
8 become a part of Respondent's license history with the Board.

9 2. Respondent shall lose all rights and privileges as a Certified Public
10 Accountant in California as of the effective date of the Board's Decision and Order.

11 3. Respondent shall cause to be delivered to the Board her Certificate on or
12 before the effective date of the Decision and Order.

13 4. Respondent fully understands and agrees that if she ever files an
14 application for licensure or a petition for reinstatement in the State of California, the Board shall
15 treat it as a petition for reinstatement. Respondent must comply with all the laws, regulations
16 and procedures for reinstatement of a revoked license in effect at the time the petition is filed,
17 and all of the charges and allegations contained in Accusation No. AC-2006-21 shall be deemed
18 to be true, correct and admitted by Respondent when the Board determines whether to grant or
19 deny the petition.

20 5. Respondent shall pay the Board its costs of investigation and enforcement
21 in the amount of \$3,920.50 prior to issuance of a new or reinstated license.

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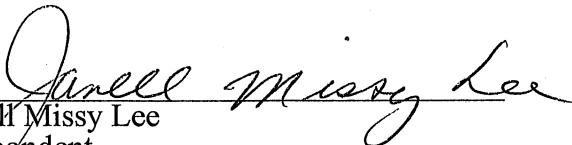
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ACCEPTANCE

I have carefully read the Stipulated Surrender of License and Order. I understand the stipulation and the effect it will have on my Certified Public Accountant Certificate. I enter into this Stipulated Surrender of License and Order voluntarily, knowingly, and intelligently, and agree to be bound by the Decision and Order of the California Board of Accountancy.

DATED: 21 Nov 2006


Janell Missy Lee
Respondent

ENDORSEMENT

The foregoing Stipulated Surrender of License and Order is hereby respectfully submitted for consideration by the California Board of Accountancy of the Department of Consumer Affairs.

DATED: 11.21.06

BILL LOCKYER, Attorney General
of the State of California



SHANA A. BAGLEY
Deputy Attorney General
Attorneys for Complainant

**BEFORE THE
CALIFORNIA BOARD OF ACCOUNTANCY
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA**

In the Matter of the Accusation Against:

Case No. AC-2006-21

JANELL MISSY LEE
P.O. Box 4815
Oakland, California 94605

Certified Public Accountant Certificate
No. CPA 62196

Respondent.

DECISION AND ORDER

The attached Stipulated Surrender of License and Order is hereby adopted by the California Board of Accountancy, Department of Consumer Affairs, as its Decision in this matter.

This Decision shall become effective on February 25, 2007.

It is so ORDERED January 26, 2007.


**FOR THE CALIFORNIA BOARD OF ACCOUNTANCY
DEPARTMENT OF CONSUMER AFFAIRS**

Exhibit A
Accusation No. AC-2006-21

1 BILL LOCKYER, Attorney General
of the State of California
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3 California Department of Justice
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9 **STATE OF CALIFORNIA**

10 In the Matter of the Accusation Against:

Case No. AC-2006-21

11 **JANELL MISSY LEE**
12 P.O. Box 4815
Oakland, California 94605

A C C U S A T I O N

13 Certified Public Accountant Certificate
14 No. CPA 62196

15 Respondent.

16
17 Complainant alleges:

18 **PARTIES**

19 1. Carol Sigmann (Complainant) brings this Accusation solely in her official
20 capacity as the Executive Officer of the California Board of Accountancy, Department of
21 Consumer Affairs.

22 2. On or about July 31, 1992, the California Board of Accountancy issued
23 Certified Public Accountant Certificate Number CPA 62196 to Janell Missy Lee (Respondent).
24 The Certified Public Accountant Certificate was in full force and effect at all times relevant to
25 the charges brought herein and will expire on November 30, 2007, unless renewed. The prior
26 status of Respondent's certificate is as follows:

27 a. Expired and not valid from December 1, 1993 through December 28, 1993,
28 then renewed from December 29, 1993 through November 30, 1995.

b. Regularly renewed in an "active" status from December 1, 1995 through November 30, 2005.

c. Renewed for the period of December 1, 2005 through November 30, 2007, in an "inactive"¹ status.

JURISDICTION

Statutory Provisions

3. This Accusation is brought before the California Board of Accountancy (Board), Department of Consumer Affairs, under the authority of the following laws. All section references are to the Business and Professions Code (Code) unless otherwise indicated.

4. Section 118(b) of the Code provides, in pertinent part, that the expiration of a license shall not deprive the Board of jurisdiction to proceed with a disciplinary action during the period within which the license may be renewed, restored, reissued or reinstated. Under section 5070.6 of the Code, an expired license may be renewed at any time within five years after the expiration.

5. Section 490 of the Code states:

"A board may suspend or revoke a license on the ground that the licensee has been convicted of a crime, if the crime is substantially related to the qualifications, functions, or duties of the business or profession for which the license was issued. A conviction within the meaning of this section means a plea or verdict of guilty or a conviction following a plea of nolo contendere. Any action which a board is permitted to take following the establishment of a conviction may be taken when the time for appeal has elapsed, or the judgment of conviction has been affirmed on appeal, or when an order granting probation is made suspending the imposition of sentence, irrespective of a subsequent order under the provisions of Section 1203.4 of the Penal Code."

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1. Renewal without compliance with the continuing education requirements results in a current but "inactive" certificate status. The holder of an inactive certificate cannot engage in the practice of public accountancy. (California Code of Regulations, title 16, section 80.)

1 6. Section 493 of the Code states, in pertinent part:

2 "Notwithstanding any other provision of law, in a proceeding conducted by a
3 board within the department pursuant to law to deny an application for a license or to suspend or
4 revoke a license or otherwise take disciplinary action against a person who holds a license, upon
5 the ground that the applicant or the licensee has been convicted of a crime substantially related to
6 the qualifications, functions, and duties of the licensee in question, the record of conviction of the
7 crime shall be conclusive evidence of the fact that the conviction occurred; but only of that fact,
8 and the board may inquire into the circumstances surrounding the commission of the crime in
9 order to fix the degree of discipline or to determine if the conviction is substantially related to the
10 qualifications, functions, and duties of the licensee in question."

11 7. Section 5063, subdivision (a), states, in the pertinent part:

12 "A licensee shall report to the board in writing of the occurrence of any of the
13 following events . . . within 30 days of the date the licensee has knowledge of these events:

14 (1) The conviction of the licensee of any of the following:

15 . . .

16 (B) Any crime related to the qualifications, functions, or duties of a public
17 accountant or certified public accountant, or to acts or activities in the course and scope of the
18 practice of public accountancy.

19 (C) Any crime involving theft, embezzlement, misappropriation of funds or
20 property, breach of a fiduciary responsibility, or the preparation, publication, or dissemination of
21 false, fraudulent, or materially misleading financial statements, reports, or information.

22 As used in this section, a conviction includes the initial plea, verdict, or finding of guilt, pleas of
23 no contest, or pronouncement of sentence by a trial court even though that conviction may not be
24 final or sentence actually imposed until appeals are exhausted. . . ."

25 8. Section 5100 states, in pertinent part:

26 "After notice and hearing the board may revoke, suspend, or refuse to renew any
27 permit or certificate granted under Article 4 (commencing with Section 5070) and Article 5
28 (commencing with Section 5080), or may censure the holder of that permit or certificate for

1 unprofessional conduct that includes, but is not limited to, one or any combination of the
2 following causes:

3 (a) Conviction of any crime substantially related to the qualifications, functions
4 and duties of a certified public accountant or a public accountant. . . ."

5 9. Section 5106 states:

6 "A plea or verdict of guilty or a conviction following a plea of nolo contendere is
7 deemed to be a conviction within the meaning of this article. The record of the conviction shall
8 be conclusive evidence thereof. The board may order the certificate or permit suspended or
9 revoked, or may decline to issue a certificate or permit, when the time for appeal has elapsed, or
10 the judgment of conviction has been affirmed on appeal or when an order granting probation is
11 made, suspending the imposition of sentence, irrespective of a subsequent order under the
12 provisions of Section 1203.4 of the Penal Code allowing such person to withdraw his plea of
13 guilty and to enter a plea of not guilty, or setting aside the verdict of guilty or dismissing the
14 accusation, information or indictment."

15 **Regulatory Provisions**

16 10. California Code of Regulations, title 16, section 99, provides in pertinent
17 part:

18 "For the purposes of denial, suspension, or revocation of a certificate or permit
19 pursuant to Division 1.5 (commencing with Section 475) of the Business and Professions Code, a
20 crime or act shall be considered to be substantially related to the qualifications, functions or
21 duties of a certified public accountant or public accountant if to a substantial degree it evidences
22 present or potential unfitness of a certified public accountant or public accountant to perform the
23 functions authorized by his certificate or permit in a manner consistent with the public health,
24 safety, or welfare. Such crimes or acts shall include but not be limited to those involving the
25 following:

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1 (a) Fiscal dishonesty or breach of fiduciary responsibility of any kind;

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3 (c) Dishonesty, fraud, or gross negligence in the practice of public accountancy or
4 in the performance of the bookkeeping operations described in Section 5052 of the code;

5 (d) Violation of any of the provisions of Chapter 1, Division III of the Business
6 and Professions Code or willful violation of any rule or regulation of the board."

7 **Cost Recovery**

8 11. Section 5107(a) states:

9 "The executive officer of the board may request the administrative law judge, as
10 part of the proposed decision in a disciplinary proceeding, to direct any holder of a permit or
11 certificate found to have committed a violation or violations of this chapter to pay to the board all
12 reasonable costs of investigation and prosecution of the case, including, but not limited to,
13 attorneys' fees. The board shall not recover costs incurred at the administrative hearing."

14 **CAUSES FOR DISCIPLINE**

15 12. The factual circumstances underlying the charges herein are that
16 Respondent was employed as a Tax Compliance Manager for Basic American Foods (company)
17 in Walnut Creek, California from 2001 to 2003. Respondent was responsible for preparing state
18 and federal corporate consolidated tax returns for the company and six subsidiaries and for
19 preparing the company's tax provisions and calculations, estimated tax payments, and extension
20 payments.

21 13. The criminal charges against Respondent involved Respondent's
22 processing of the company's tax payments to the California Franchise Tax Board (FTB) and
23 appropriating the funds to Respondent's personal FTB tax account for payment of Respondent's
24 personal state tax liability. The first instance occurred on or about December 1, 2002, where a
25 company check for \$25,000.00 was sent to the FTB in payment of Respondent's personal tax
26 liability. The second instance occurred on or about February 28, 2003, where a company check

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1 for \$150,000.00 was sent to the FTB in payment of Respondent's personal tax liability. In both
2 instances, the check amounts were similar to legitimate tax payments made on behalf of the
3 company to the FTB.

4 14. The FTB paid Respondent a refund of approximately \$25,000.00 for
5 overpaid taxes for 2002. Respondent repaid the 2002 overpayment to the FTB. The FTB was
6 alerted to the diverted payment of \$150,000.00 prior to refunding any portion to Respondent and
7 the funds were returned to the company.

8 **First Cause For Discipline**

9 (Conviction of Crime Substantially Related to Accounting)

10 15. Complainant realleges the allegations of Paragraphs 12 through 14, above,
11 which are herein incorporated by reference as though fully set forth.

12 16. Respondent is subject to disciplinary action under sections 490 and
13 5100(a) of the Code in that she was convicted of a crime substantially related to the
14 qualifications, functions, and duties of a Certified Public Accountant, within the meaning of
15 California Code of Regulations, title 16, section 99. The circumstances are as follows:

16 17. On or about August 24, 2005, in the criminal proceeding People v. Janell
17 Missy Lee, Contra Costa County Superior Court Case No. 122244-7, Respondent was convicted
18 by a nolo contendere plea of violating Penal Code section 503 (Embezzlement), as a
19 misdemeanor offense.

20 18. The criminal complaint charged that Respondent, on or about December 1,
21 2002 through February 30, 2003 [sic], at Walnut Creek, in Contra Costa County, did unlawfully
22 and fraudulently appropriate, and secrete with a fraudulent intent to appropriate, property
23 controlled and cared for by Respondent by virtue of Respondent's employment as a clerk of
24 Basic American Foods.

25 19. Respondent was sentenced to serve a two-year probation and to serve 45
26 days in jail, with credit for time served, and to pay a fine of \$120.00. Respondent had already
27 paid full restitution to the FTB.

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20. Complainant realleges the allegations of Paragraphs 12 through 19, above, which are herein incorporated by reference as though fully set forth.


PRA YER

1. Revoking or suspending or otherwise imposing discipline upon Certified Public Accountant Certificate Number CPA 62196, issued to Janell Missy Lee;

2. Ordering Janell Missy Lee to pay the California Board of Accountancy the reasonable costs of the investigation and prosecution of this case, pursuant to Business and Professions Code section 5107; and

3. Taking such other and further action as deemed necessary and proper.

DATED: May 9, 2006


CAROL SIGMANN
Executive Officer
California Board of Accountancy
Department of Consumer Affairs
State of California
Complainant